

# FLETCHER & SIPPEL LLC

ATTORNEYS AT LAW

29 North Wacker Drive  
Suite 920  
Chicago, Illinois 60606-2832

MYLES L. TOBIN  
(312) 252-1502  
mtobin@fletcher-sippel.com

**FILED**  
NOV - 2012  
SURFACE  
TRANSPORTATION BOARD

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Phone: (312) 252-1500  
Fax: (312) 252-2400  
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November 6, 2012

**VIA FEDERAL EXPRESS**

Ms. Cynthia T. Brown  
Chief, Section of Administration  
Office of Proceedings  
Surface Transportation Board  
395 E Street, S.W., Room 1034  
Washington, DC 20423-0001

ENTERED  
Office of Proceedings

NOV 7 - 2012

Part of  
Public Record

Re: **Finance Docket No. 35692**  
**Eastside Community Rail, LLC – Acquisition and Operation Exemption –**  
**GNP RLY, Inc.**

Dear Ms. Brown:

Enclosed for filing in the above-captioned proceeding are an original and ten copies of the **Verified Notice of Exemption of Eastside Community Rail, LLC pursuant to 49 C.F.R. § 1150.31**, dated November 6, 2012. A check in the amount of \$1,800.00, representing the appropriate fee for this filing, and a computer diskette containing the text of the Notice and the caption summary are attached.

One extra copy of the Notice and this letter are also enclosed. I would request that you date-stamp those items to show receipt of this filing and return them to me in the provided envelope.

If you have any questions regarding this filing, please feel free to contact me. Thank you for your assistance on this matter.

Very truly yours,

Myles L. Tobin  
Attorney for Eastside Community Rail, LLC

MLT/ekf  
Enclosures (12)  
cc: Douglas Engle

**FEE RECEIVED**

NOV 7 - 2012

SURFACE  
TRANSPORTATION BOARD

BEFORE THE  
SURFACE TRANSPORTATION BOARD

**FEE RECEIVED**

FINANCE DOCKET NO. 35692

NOV 7 - 2012

EASTSIDE COMMUNITY RAIL, LLC **SURFACE  
TRANSPORTATION BOARD**  
— ACQUISITION AND OPERATION EXEMPTION— GNP RLY, INC.

VERIFIED NOTICE OF EXEMPTION  
OF  
EASTSIDE COMMUNITY RAIL, LLC  
PURSUANT TO 49 C.F.R. § 1150.31

**FILED**  
NOV . - 2012  
**SURFACE  
TRANSPORTATION BOARD**

Myles L. Tobin  
Fletcher & Sippel LLC  
29 North Wacker Drive  
Suite 920  
Chicago, Illinois 60606-2832  
(312) 252-1500

ATTORNEY FOR  
EASTSIDE COMMUNITY RAIL, LLC

Dated: November 6, 2012

**ENTERED**  
**Office of Proceedings**

NOV 7 - 2012

**Part of  
Public Record**

BEFORE THE  
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 35692

EASTSIDE COMMUNITY RAIL, LLC  
— ACQUISITION AND OPERATION EXEMPTION— GNP RLY, INC.

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**VERIFIED NOTICE OF EXEMPTION  
OF  
EASTSIDE COMMUNITY RAIL, LLC  
PURSUANT TO 49 C.F.R. § 1150.31**

Pursuant to 49 C.F.R. § 1150.31, *et seq.*, Eastside Community Rail, LLC (“ECR”), a non-carrier, hereby files this Verified Notice of Exemption to purchase the assets of GNP RLY, Inc. in a bankruptcy proceeding, receive permanent assignments of all operating rights in connect therewith, and pending closing on the purchase of the operating and lease rights, enter into an Interim Operating Agreement so that ECR can manage the assets on the Line prior to closing of the purchase transaction.

Specifically, ECR will be purchasing all assets, operating and lease rights of GNP RLY, Inc. Those rights include, but are not limited to, a line of railroad formerly owned by BNSF Railway Company (“BNSF”) and extending from approximately milepost 23.8 in Woodinville to approximately milepost 38.25 in Snohomish, a distance of 14.45 miles in King and Snohomish Counties, Washington (the “Line”). The Line was the subject of a previous Notice of Acquisition and Operation in STB Finance Docket No. 35213 in February, 2009. In that proceeding, GNP RLY, Inc. acquired from BNSF an exclusive freight rail operating easement for

operations on the Line. In 2011, GNP RLY, Inc. filed for bankruptcy with the United States Bankruptcy Court, Western District of Washington.

Pursuant to an Asset Purchase Agreement between ECR and the Bankruptcy Trustee for GNP RLY, Inc., ECR will purchase, inter alia, all of the GNP RLY assets and operating agreements pertaining to the Line, including, but not limited to the following:

All of GNP's rights and interests under the Railroad Right of Way License between Port of Seattle and GNP RLY, Inc., dated on or about December 18, 2009;

All of GNP's rights and interests under the Operations Maintenance Agreement between the Port of Seattle and GNP RLY, Inc., dated on or about December 18, 2009;

All of GNP's rights and interests under the Running Rights and Railway Operations Agreement dated May 23, 2008 between FNP and Snohomish County;

All of GNP's rights and interests in all real property and easements described in those Quit Claim Deeds recorded under Snohomish County AF 20091218001535, 20091218001536, 20091218001537, 20091218001538, 20091218001539, 20091218001540 and King County AF 200912201438 and 20091220439;

All Car Hire Agreements and Interchange Agreements.

The Asset Purchase Agreement was approved by the Bankruptcy Court pursuant to an Order entered on September 27, 2012.

Pending the closing of the transaction, ECR and Ballard Terminal Railroad Company ("Ballard") entered into an Interim Operating Agreement with the Bankruptcy Trustee of GNP RLY pursuant to which ECR will manage the assets of GNP RLY and Ballard will continue to operate the Line in the same fashion that it was operating the Line for GNP RLY. The Line is shown on Exhibit A, attached and incorporated herein, and is in King and Snohomish Counties, Washington. Based on projected revenues for the ECR, it expects to become and remain a Class III rail carrier after consummation of the transaction proposed herein.

In accordance with the requirements of 49 C.F.R. § 1150.33, ECR submits the following information:

**Name and Address of Applicant: 49 C.F.R. § 1150.33(a)**

The full name and address of the rail carrier applicant herein is as follows:

Eastside Community Rail, LLC  
1340 Lombard Street, #606  
San Francisco, CA 94109

**Applicant's Representative: 49 C.F.R. § 1150.33(b)**

ECR's representative to whom correspondence regarding this transaction should be sent is as follows:

Myles L. Tobin  
Fletcher & Sippel LLC  
29 North Wacker Drive  
Suite 920  
Chicago, Illinois 60606-2832  
(312) 252-1500

**Statement Concerning Agreement: 49 C.F.R. § 1150.33(c)**

GNP RLY, Inc., through the Bankruptcy Trustee in the GNP RLY, Inc. bankruptcy proceeding, and pursuant to an Order of the Bankruptcy Court in that bankruptcy proceeding, has agreed to sell its operating, lease and other rights on the Line as set forth in an Asset Purchase Agreement dated September 5, 2012.

Prior to closing, ECR and Ballard have entered into an Interim Operating Agreement with the Bankruptcy Trustee so that ECR can manage the assets of GNP RLY and Ballard can continue its pre-existing rail operations while progressing to the closing.

**Operation of the Property: 49 C.F.R. § 1150.33(d)**

ECR will be a non-operating common carrier on the line. Once ECR acquires the Line, it will either sublease rights on the Line to Ballard or, alternatively, utilize Ballard as its agent for rail operations on the Line.

Ballard has been continuously operating the Line for several years, as agent of GNP RLY, Inc.

**Summary of the Transaction: 49 C.F.R. § 1150.33(e)**

On October 27, 2008, the Board served a decision in Finance Docket 35128 dismissing for lack of jurisdiction a Verified Notice of Exemption by the Port of Seattle ("Port") to acquire the right of way, track and other physical assets comprising the Line, but not the rail freight operating easement or associated common carrier operation that were retained by BNSF. Simultaneous with the Port's acquisition of those physical assets and pursuant to a Freight Easement Sale Agreement, BNSF conveyed the exclusive rail freight operating easement and common carrier obligations to GNP RLY, Inc., for the purpose of providing freight and passenger excursion operations over the Line. GNP RLY also entered into an Operations and Maintenance Agreement with the Port, pursuant to which it was responsible for providing freight, passenger excursion operations and maintenance way over the Line. These transactions were the subject of a Notice of Exemption in Finance Docket 35213, served February 13, 2009.

In 2011, GNP RLY, Inc. filed for Bankruptcy in the United States Bankruptcy Court for the Western District of Washington. Pursuant to an Asset Purchase Agreement with the GNP RLY Bankruptcy Trustee, dated September 5, 2012, ECR<sup>1</sup> will purchase all of the GNP RLY assets and operating agreements, including, but not limited to, the following:

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<sup>1</sup> Mr. Douglas Engle, General Manager of ECR, is one of the former shareholders of GNP RLY, Inc.

All of GNP's rights and interests under the Railroad Right of Way License between Port of Seattle and GNP RLY, Inc., dated on or about December 18, 2009;

All of GNP's rights and interests under the Operations Maintenance Agreement between the Port of Seattle and GNP RLY, Inc., dated on or about December 18, 2009;

All of GNP's rights and interests under the Running Rights and Railway Operations Agreement dated May 23, 2008 between FNP and Snohomish County;

All of GNP's rights and interests in all real property and easements described in those Quit Claim Deeds recorded under Snohomish County AF 20091218001535, 20091218001536, 20091218001537, 20091218001538, 20091218001539, 20091218001540 and King County AF 200912201438 and 20091220439;

All Car Hire Agreements and Interchange Agreements.

This transaction will be closed on or after December 8, 2012.

**Map: 49 C.F.R. § 1150.33(f)**

A Map showing the tracks that are the subject of this exemption is attached as Exhibit A to this notice.

**Certificate of Compliance: 49 C.F.R. § 1150.33(g)**

A Certificate of Compliance with the provisions of 49 C.F.R. § 1150.33(g) is attached as Exhibit B to this notice.

**Transactions Imposing Interchange Commitments: 49 C.F.R. § 1150.33(h)**

Not applicable, as the Line does not connect with any railroad other than BNSF, and no interchange commitments exist.

**Advance Notice: 49 C.F.R. § 1150.32(e)**

The projected annual operating revenue of ECR upon consummation of this transaction does not exceed \$5 million, and, accordingly, the advance notice requirements of 49 C.F.R. § 1150.32(e) are not applicable to this transaction. See Exhibit B hereto.

**Environmental and Historic Preservation Data: 49 C.F.R. § 1105**

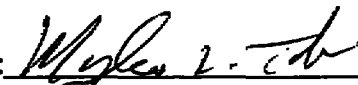
Under C.F.R. § 1105.6(c)(2), ECR's proposed operation of the tracks as described herein is exempt from environmental reporting requirements. The proposed transaction will not result in significant changes in carrier operations, i.e., changes that exceed the thresholds established in 49 C.F.R. § 1105.7(e)(4) or (5).

Under 49 C.F.R. § 1105.8(b)(1), ECR's exemption herein is also exempt from historic preservation reporting requirements. The proposed transactions are for the purpose of continued rail operations. Further, Surface Transportation Board approval is required to discontinue or abandon any service, and there are no plans to dispose of or alter properties subject to Board jurisdiction that are fifty years old or older.

**Caption Summary: 49 C.F.R. § 1150.44**

A caption summary in appropriate form is attached as Exhibit C to this notice.

Respectfully submitted,

By:   
Myles L. Tobin  
Fletcher & Sippel LLC  
29 North Wacker Drive, Suite 920  
Chicago, Illinois 60606-2832  
(312) 252-1500

**ATTORNEY FOR EASTSIDE COMMUNITY  
RAIL, LLC**

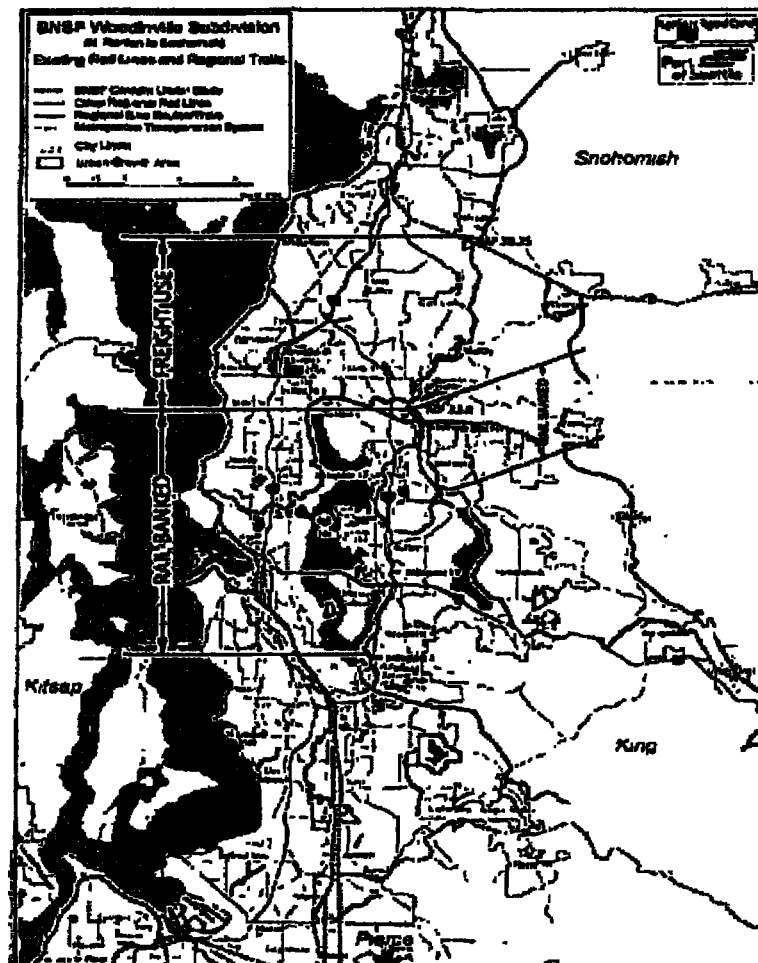
Dated: November 6, 2012

## EXHIBIT A

### EXHIBIT "A"

#### MAP

Freight Use (MP 23.8 to 38.25)

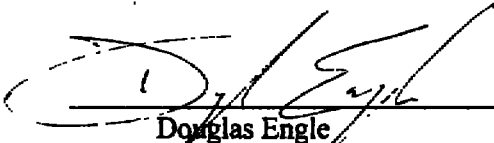


**EXHIBIT B**

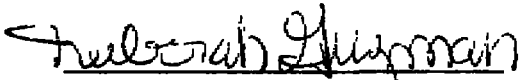
**CERTIFICATION**

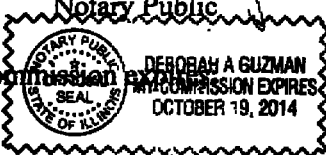
State of Illinois )  
County of Cook ) ss:

Douglas Engle, being duly sworn, hereby certifies that the projected annual rail revenue of Eastside Community Rail, LLC does not exceed \$5 million and will not result in the creation of a Class II or Class I carrier under the provisions of 49 C.F.R. § 1201(1-1).

  
\_\_\_\_\_  
Douglas Engle  
Managing Director  
Eastside Community Rail, LLC

SUBSCRIBED AND SWORN TO  
before me this 6th day  
of November, 2012



Notary Public  
My Commission Expires  
DEBORAH A. GUZMAN  
OCTOBER 19, 2014

**SURFACE TRANSPORTATION BOARD**

**NOTICE OF EXEMPTION**

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**FINANCE DOCKET NO. 35692**

**EASTSIDE COMMUNITY RAIL, LLC  
— ACQUISITION AND OPERATION EXEMPTION— GNP RLY, INC.**

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Eastside Community Railroad, LLC (“ECR”) a non-carrier, has filed a Verified Notice of Exemption to purchase from GNP RLY, Inc. (“GNP RLY”), through its Bankruptcy Trustee, GNP RLY’s assets, lease and operating rights on a line of railroad formerly known as the Woodinville Subdivision and extending between approximately milepost 23.8 southwest of Woodinville and approximately milepost 38.25 in Snohomish, a distance of 14.45 miles in King and Snohomish Counties, Washington (the “Line”).

ECR plans to consummate this transaction on or after December 8, 2012, more than 30 days after the filing of this Notice. Prior to closing on the Asset Purchase Agreement, ECR and Ballard Terminal Railroad Company (“Ballard”) have entered into an Interim Operating Agreement with the Bankruptcy Trustee so that ECR can manage the GNP RLY assets and Ballard can continue pre-existing railroad operations on the Line while progressing to the closing.

Comments must be filed with the Board and served on:

Myles L. Tobin  
Fletcher & Sippel LLC  
29 North Wacker Drive  
Suite 920  
Chicago, Illinois 60606-2832  
(312) 252-1500

This Notice is filed under 49 C.F.R. § 1150.31. If this Notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. § 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Dated: \_\_\_\_\_, 2012

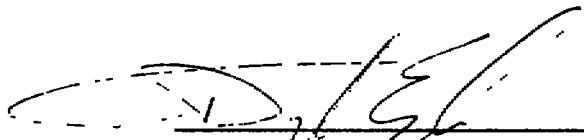
By the Board

Cynthia T. Brown  
Chief, Section of Administration  
Office of Proceedings  
Surface Transportation Board

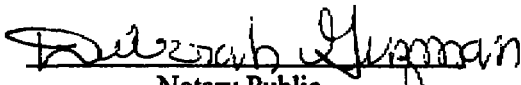
**VERIFICATION**

State of Illinois )  
County of Cook )      ss:

Douglas Engle, being duly sworn, deposes and says that he is Managing Director of Eastside Community Rail, LLC, that he has read the foregoing Notice of Exemption and knows the facts asserted therein, and that the same are true as stated.

  
\_\_\_\_\_  
Douglas Engle  
Managing Director  
Eastside Community Rail, LLC

SUBSCRIBED AND SWORN TO  
before me this 6th day  
of November, 2012

  
\_\_\_\_\_  
Notary Public  
